Supreme Court, U.S.
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No. ____

In the Supreme Court of the United States

Blue Diamond Coal Company,
Petitioner,

v.

Kenneth S. Apfel, Commissioner of Social Security Administration, and

Michael H. Holland, William P. Hobgood, Marty D. Hudson, Thomas O.S. Rand, Elliot A. Segal, Carl E. Van Horn, Gail R. Wilensky, Trustees of the United Mine Workers of America Combined Benefit Fund,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does Federal Rule of Civil Procedure 60(b)(6) grant discretion to a District Court to vacate its final declaratory judgment upholding the constitutionality of a federal statute, after the Supreme Court has declared the same statute unconstitutional in a case against the same defendants?

PARTIES TO THE PROCEEDINGS

Petitioner

Petitioner Blue Diamond Coal Company is a wholly owned subsidiary of James River Coal Company. There is no publicly held company that owns 10% or more of the stock of James River Coal Company.

Respondents

Kenneth S. Apfel in his capacity as the Commissioner of the Social Security Administration; and Michael H. Holland, William P. Hobgood, Marty D. Hudson, Thomas O.S. Rand, Elliot A. Segal, Carl E. Van Horn, Gail R. Wilensky, in their capacities as the Trustees of the United Mine Workers of America Combined Benefit Fund.

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Blue Diamond Coal Company ("Blue Diamond") respectfully requests that this Court issue a writ of certiorari to review the judgment entered in this case by the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinion of the court of appeals is reported at 249 F.3d 519 (6th Cir. 2001), and is reproduced in App. A at 1a-18a. The Memorandum Opinion and Order of the United States District Court for the Eastern District of Tennessee vacating its original Order of dismissal is unreported and is reproduced in App. B at 19a-29a. The original District Court Opinion is reported at 174 West B.R. 722 (E.D. Tenn. 1994) and is reproduced, with its accompanying Order of dismissal in App. C at 30a-48a.

JURISDICTION

The opinion of the United States Court of Appeals for the Sixth Circuit was issued on May 3, 2001. This Court has jurisdiction under 28 U.S.C. §1254(1).

FEDERAL RULE OF CIVIL PROCEDURE PROVISION INVOLVED

Federal Rule of Civil Procedure 60(b)(6) provides:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (6) any other reason justifying relief from the operation of the judgment.
> Fed.R.of Civ.P. 60(b)(6).

STATEMENT OF THE CASE

In 1992, Congress enacted the Coal Industry Retirees Health Benefit Act (the "Coal Act"), 26 U.S.C. §§ 9701 et. seq. The Coal Act required numerous coal companies to make monthly "premium" payments to the United Mine Workers of America (the "UMWA") Combined Benefit Fund (the "Combined Fund"), for the purpose of funding a medical and death benefit plan for UMWA retirees and their families. Only companies that had signed collective bargaining agreements with the UMWA in the past were compelled to pay these new, mandatory premium liabilities. The Coal Act's retrospective reach encompassed a group of 124 companies, such as the Petitioner, Blue Diamond Coal Company, whose past contracts with the UMWA had been completed and closed before calendar year 1974, at least 28 years before the Act was passed. Those companies' pre-1974 contracts with the UMWA intimated no promise or expectation of any future payments or liabilities to the UMWA's benefit plan. Those latter companies became known as the "superreachback" companies. See generally Eastern Enterprises v. Apfel, 524 U.S. 498 (1998).

Blue Diamond filed a lawsuit in the United States District Court for the Eastern District of Tennessee, seeking a declaratory judgment that the Coal Act, as applied to Blue Diamond, violated Blue Diamond's property rights under the Fifth Amendment of the federal Constitution. A small number of other superreachback companies also filed similar lawsuits in their own home-state federal courts, all around the same time, shortly after the Coal Act's passage. The defendants in each of these cases consisted of the Social Security Administration ("SSA") (initially sued through the Secretary of Health and Human Services), which had the statutory responsibility for assigning specific "premium"

liabilities to each company, and the Trustees of the Combined Fund, which collected, received, and spent each company's "premiums."

The district court dismissed Blue Diamond's case, finding the Coal Act did not violate its Fifth Amendment property rights. App. C at 31a, 47a. The Court of Appeals for the Sixth Circuit affirmed. This Court denied Blue Diamond's petition for a writ of certiorari. In Re: Blue Diamond Coal Company, 174 B.R. 722 (E.D. Tenn. 1994), affirmed 79 F.3d 516 (6th Cir. 1996), cert. denied 519 U.S. 1055 (1997). Several months later, this Court granted certiorari to another superreachback company that had filed one of the other similar lawsuits against the same defendants. See Eastern Enterprises v. Chater, 110 F.3d 150 (1st Cir. 1997), cert. granted, 522 U.S. 931 (1997). On June 25, 1998, this Court declared that the Coal Act violated the Fifth Amendment property rights of the Eastern Enterprises company. Eastern Enterprises v. Apfel, 524 U.S. 498 (1998).[1]

In the aftermath of Eastern Enterprises, the SSA addressed a letter to each of the supereachback companies, including Blue Diamond, declaring that all assignments of Coal Act liability to them were "void." The other defendant in Eastern Enterprises, the Combined Fund, ceased all collection efforts with respect to all of the superreachback companies, again including Blue Diamond. The Combined Fund then refunded the "premiums" it had previously received from the superreachback companies pursuant to

[1] The Court split on the specific textual basis within the Fifth Amendment for its ruling; four Justices felt the Takings clause had been violated by the retrospective effect of the Coal Act against the superreachback companies, while one Justice felt the Due Process clause had been violated.

"void" assignments. But here, the Combined Fund made a significant exception: it intentionally refused to refund premiums to Blue Diamond, because of the "final judgment" that had dismissed Blue Diamond's claims that the Coal Act was unconstitutional. Blue Diamond was accordingly denied a refund of approximately $13,000,000 in Coal Act premiums,[2] for no other reason that the fact it had tried unsuccessfully to have an unconstitutional statute declared unconstitutional, and had certiorari denied to it before June 25, 1998, the date Eastern Enterprises was decided.

To seek relief from what it perceived to be extremely unjust treatment, Blue Diamond filed a motion under Federal Rule of Civil Procedure 60(b)(6) to vacate the final judgment in its earlier lawsuit. The United States District Court for the Eastern District of Tennessee determined that "it would be unfair to allow its previous judgment to stand," in light of Eastern Enterprises, and granted Blue Diamond's motion. App. B at 28a. The Combined Fund appealed to the United States Court of Appeals for the Sixth Circuit. The court of appeals ruled that this Court's invalidation of the Coal Act, in part, in Eastern Enterprises, after that court and the district court had upheld the constitutionality of the same statute, was not an "extraordinary circumstance" justifying relief from the inconsistent lower court judgment under Fed.R.of Civ.P.60(b)(6). App. A at 8a, 12a-13a. Accordingly, the

[2] Blue Diamond's premium payments totaled $14,613,798.08. Some of that money, very roughly approximating ten percent, has been refunded to Blue Diamond, pursuant to a court settlement in a different case involving the calculation of individual premiums, and pursuant to a special Congressional appropriation, enacted after the District Court below had granted Rule 60(b)(6) relief, requiring a small, partial refund. The special appropriation, in Title VII of Pub.L. No. 106-291, made no attempt to preclude judicial remedies.

court of appeals ruled that the district court had abused its discretion under Rule 60(b)(6) in vacating its earlier judgment, reversed the district court's order and required the district court to reinstate its previous order of dismissal.

Blue Diamond seeks a writ of certiorari from the court of appeals' decision.

REASON FOR GRANTING THE WRIT:

The Court Of Appeals Has Decided An Important Question Of Federal Law That Has Not Been, But Should Be, Settled By This Court

I. This Court Should Decide Whether Fed.R.Civ.P. 60(b)(6) May Be Used By District Courts To Remediate The Inequity Of Allowing Divergent, Lower Court Legal Judgments On The Constitutionality Of A Federal Statute To Remain Effective After This Court Has Declared That Same Statute Unconstitutional In A Case Against The Same Defendants

The Court of Appeals characterized the simultaneous recognition and effectiveness of "divergent judgments" on the constitutionality of a single federal statute as a "common" and "necessary" result of the constitutional litigation process that ultimately leads to this Court. ("[C]hanges in the judicial interpretation of the law are common, and necessarily result in divergent judgments.") App. A at 12a-13a. The decision below thus holds that the constitutional rights of some must be lost in order to identify and preserve the constitutional rights of all, a notion that rings more of ritualistic sacrifice than application of law. The idea of sacrificing the constitutional rights of some for the benefit of all has grave implications for

the judiciary's primary role of applying the "equal protection of the law." This Court should decide the vitally important federal issue of whether sacrifices of constitutional rights by some are indeed "necessary" in constitutional litigation that leads to this Court, or whether Rule 60(b)(6) can be used by the district courts to avoid unjustified sacrifices, once this Court rules authoritatively on the meaning of the Constitution.

When "divergent judgments" addressing the constitutionality of a single statute remain effective, the "divergent" constitutional rules, and "divergent" statutory rules flowing from those judgments also remain effective at the same time. This means that one "law" exists for some people, while a completely different "law" exists for others. In this case, the Coal Act remains an effective, operative statute against Blue Diamond through the date of this Court's decision in Eastern Enterprises, while the unconstitutional effects of that statute have been retroactively avoided by most of the remaining companies in Blue Diamond's superreachback class. The Fifth Amendment has protected all of the property rights of most superreachback companies, but, so far at least, that fundamental constitutional provision has not protected all of the property rights of Blue Diamond. The Combined Fund retains approximately $13,000,000 that the Fifth Amendment says never belonged to it. See Mary Helen Coal Corp. v. Hudson, 235 F.3d 207 (4th Cir. 2000)(requiring the Combined Fund to pay interest on its refunds to superreachback companies, under Eastern Enterprises). The only thing that distinguishes Blue Diamond from most of its "superreachback" contemporaries, is the mere "accident of timing" that its case against the Coal Act was decided before June 25, 1998, when Eastern Enterprises was decided.[3]

[3] The "accident of timing" characterization for what has happened to Blue Diamond in this case comes from the

Respectfully, this arbitrary exclusion from the constitutional rule of law is likely to recur in the future, and when it does, it causes extraordinary injustice. Blue Diamond, as one of the first litigants in a series of cases challenging the constitutionality of a federal statute, has been denied "equal justice under the law" for no better reason than it raised entirely valid constitutional objections in the first place. Rule 60(b)(6) was written to enable district courts to relieve litigants of the effects of final judgments "whenever such action is appropriate to accomplish justice." Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988). Respectfully, "equal justice" **is** "justice."

Contrary to the court of appeals' acceptance of "divergent judgments" as a necessity, "equal justice under the law" represents an important consideration in evaluating the "justice," or the "extraordinary" injustice of the continued recognition of an erroneous lower court judgment that upholds an unconstitutional statute. This Court, and others have invoked "equal justice" to vacate an otherwise "final" adjudication in order to apply more mundane legal rules, such as tort and contract principles, on an equal, retroactive, basis to participants in the "same accident" or "same contract." See Gondeck v. Pan American World Airways, Inc., 382 U.S. 25 (1965); Pierce v. Cook & Co., 518 F.2d 720 (10th Cir. 1975); Adams v. Merrill Lynch Pierce Fenner & Smith, 888 F.2d 696 (10th Cir. 1989); Norman v. Nichiro Gyogyo Kaisha, Ltd. 761 P.2d 713 (Alas. 1988); First American Bank v. Bonded Elevator, Inc. 111 F.R.D. 74 (W.D. Ky. 1986).

Combined Fund itself. One of its attorneys, in corresponding with the Department of Interior on a funding issue created by Eastern Enterprises, described this Court's grant of certiorari review to the Eastern Enterprises company, instead of to one of the earlier certiorari petitioners from the superreachback class, such as Blue Diamond, an "accident of timing."

Blue Diamond submits that "equal justice" is more, not less, important in the application of the Constitution. [4]

As the limitations of Gondeck and its progeny to participants in the "same accident" or "same contract" suggest, there are only two possible circumstances that serve to justify the continued recognition of erroneous lower court judgments, upholding a statute declared unconstitutional by this Court.[5] Either a defendant may have reasonably, and actually, relied upon its initial lower court victory, before this Court addressed the issue, or the plaintiff could have done

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[4] The constitutional concept of "equal justice under the law" has historical origins predating the 14th Amendment, going back to the Magna Carta in 1215, in which the King of England surrendered his sovereign authority to deprive his barons of their lives, liberty or property, except by the "Law of the Land." See, e.g. Bank v. Cooper, 10 Tenn. 599 (1831), in which the Tennessee Supreme Court invalidated a retrospective "special" Tennessee statute that imposed procedural trial disabilities on some, but not all similarly situated litigants, whose cases had already accrued, as inconsistent with the "Law of the Land" clause of the Tennessee Constitution. The federal Constitution has always contained the same lofty "Law of the Land" phrase, and directs every judge to follow it. U.S.Const., Article VI, paragraph 2.

[5] A two member plurality of this Court remarked, in James B. Beam Distilling Co. v Georgia, 501 U.S. 529 (1991), that "temporal distinctions" justified limiting the retroactivity of this Court's constitutional decisions by the procedural barrier of a final judgment. Neither the plurality, nor the rest of the Court, however, has ever offered any opinions of what should happen when relevant "temporal distinctions" are completely absent, and the only difference between the winners and the losers in a constitutional case is the timing of their decisions by their respective courts. James B. Beam did not address Rule 60(b)(6) issues.

something, or failed to do something, that resulted in the waiver of his constitutional rights as declared by this Court. See Chicot County Drainage Dist. v. Baxter State Bank, 308 U.S. 371 (1940); see also Ackermann v. United States, 340 U.S. 193 (1950). The district court below, as the primary fact finder under Rule 60(b)(6), found neither of those circumstances in this case. App. B at 21a-29a. And indeed, they do not exist here.

As is likely whenever a constitutionally questionable federal statute is enacted, the Coal Act was challenged, practically immediately, by a series of declaratory judgment lawsuits brought by several superreachback companies against the same defendants in each case. Thus, when the SSA and the Combined Fund obtained a lower court judgment dismissing Blue Diamond's lawsuit, those defendants achieved no closure of the legal issues therein upon which they could reasonably or practically rely. Those constitutional issues remained alive, and unresolved in other cases against the same defendants, until this Court finally provided real closure to those same defendants in Eastern Enterprises.

Moreover, Blue Diamond had exhausted its appellate remedies, without waiving any of its constitutional rights [6]

[6] In the courts below, the Combined Fund attempted to make a case that Blue Diamond had waived its due process objection to the Coal Act by limiting its petition for a writ of certiorari to this Court to its Takings Clause objection. However, Blue Diamond's objections, under the Takings Clause and the Due Process Clause, both made pursuant to the same facts, had been fully litigated, and dismissed, in the courts below. Under those circumstances, the omission of a strictly legal issue from a petition for certiorari does not waive it; inasmuch as the respondents are free to raise that issue in their response, as the SSA did, and this Court is free to consider and adjudicate that

Blue Diamond objected to the constitutionality of the Coal Act in the district court, in the court of appeals, and finally in this Court, in an unsuccessful effort to obtain review here.

Ultimately, if, as the court of appeals has stated, the continuing effectiveness of "divergent judgments" on the constitutionality of a single federal statute is a commonplace "necessity", then the constitutional rights of future initial challengers like Blue Diamond Coal Company stand to become the sacrificial offerings gathered by the federal judicial system as it debates and finally resolves important issues of constitutional law. Most respectfully, Blue Diamond submits that this Court should consider whether requiring such sacrifices will chill the orderly refinement of constitutional law at the bar of this Court, by discouraging potential litigants from being the ones who "go first." And more importantly, Blue Diamond submits that this Court should consider the vitally important question of whether requiring such sacrifices, by categorically denying Rule 60(b)(6) relief to them, either serves, or defeats, the threshold judicial goal of applying "equal justice under the law."

II. The Court Of Appeals Has Erroneously Ruled That This Court's Invalidation Of A Federal Statute Under The Constitution Is Not An "Extraordinary Circumstance" That Warrants Equitable Examination Under Fed.R.Civ.P. 60(b)(6) By A District Court Of Its Own Inconsistent Judgment In Favor Of The Same Defendants

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issue, particularly when it is a condition precedent to the stated issue, as Justice Kennedy suggested the "due process" issue related to the takings issue, in his concurrence in Eastern Enterprises. See Lebron v. National R.R. Passenger Corp., 513 U.S. 374 (1995). Neither court below accepted or relied upon this particular argument of the Combined Fund.

Relief from judgments under Fed.R.Civ.P. 60(b)(6) may be granted only in "extraordinary circumstances." Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 864 (1988). The court of appeals below never reached or addressed the District Court's ultimate conclusion that continued recognition of its own erroneous judgment, after Eastern Enterprises, would be "unfair." Instead, the court of appeals ruled that "a change in decisional law is usually not, by itself, an 'extraordinary circumstance' meriting Rule 60(b)(6) relief" (App. A at 8a) and "changes in the judicial interpretation of the law are common, and necessarily result in divergent judgments." App. A at 12a-13a. From those conclusions, the court of appeals ruled the district court had abused its discretion in granting, on simple fairness grounds, Rule 60(b)(6) relief from its erroneous judgment and ordered the district court to reinstate that erroneous judgment. App. A at 18a.

To be sure, the court of appeals did conduct its own *de novo* "fairness" analysis, in violation of its limited scope of review of Rule 60(b) matters.[7] App. A at 16a-17a. In its own analysis, the court of appeals found fairness in the continued recognition of "divergent judgments" here, because of what it characterized as the Combined Fund's "substantial" "reliance" on the district court's earlier, final judgment. The court of appeals found that the Combined Fund had relied on the district court's earlier judgment by merely spending the premiums it had received pursuant to the Coal Act. App. A at 17a. There was no evidence in the record to show that the Combined Fund spent premiums in actual reliance on the district court's earlier judgment. Indeed other facts discerned

[7] District court rulings on Rule 60(b) matters are supposed to be reviewed solely for an "abuse of discretion." Conte v. General Housewares Corp., 215 F.3d 628 (6th Cir. 2000).

by the court of appeals indicate that the opposite is true. The earlier district court judgment against Blue Diamond imposed no affirmative obligations itself to pay money to the Combined Fund, nor did that judgment specifically authorize the Combined Fund to spend any money it received. To the contrary, that judgment simply dismissed Blue Diamond's lawsuit for a declaratory judgment. App. C at 31a. All the record reveals is that the Combined Fund merely followed its statutory mandate under the Coal Act when it spent all of the superreachback company money it received, not only from Blue Diamond, but from the other superreachback companies as well, regardless of their litigation or "judgment" status.[8] When Eastern Enterprises was decided, the Combined Fund refunded most of that which it had spent, because the money had all been received under "void," unconstitutional assignments of liability. The Combined Fund specifically "relied" on its victory against Blue Diamond only when it denied Blue Diamond a refund that was distributed to nearly every other superreachback company that paid its "premiums". That reliance occurred after, not before, that

[8] Further, in this case, as the district court below tried to say, see App. B at 28a, the Coal Act itself precluded the Combined Fund from claiming any equitable reliance on its mere receipt and expenditure of premium payments. The Coal Act required the Combined Fund to refund premiums in certain situations, regardless of whether it had already spent them. 26 U.S.C. §9706(f)(3)(A)(i). While both the district court and the court of appeals correctly noted the technical inapplicability of that statutory refund requirement to this case, the court of appeals ignored its significant implications for fairness, for which the district court cited it. The Coal Act itself did not allow the Combined Fund to invoke equitable "reliance" on its receipt and expenditure of premiums, if the premiums were assessed and received by mistake.

same defendant had finally lost on the same issue in Eastern Enterprises.[9]

The court of appeals did not address, or even discern, any of the differences between "a change in decisional law" and this Court's invalidation of a statute under the Constitution. "A change in decisional law" usually operates only on a prospective basis, so that the "law" in place before the change remains "the law" for that earlier time, even after the change is announced. See, e.g., McIntyre v. Balentine, 833 S.W.2d 52, 58 (Tenn. 1992) (prospectively changing the common law of Tennessee from that of contributory negligence, to that of comparative negligence). This Court's invalidation of a statute under the Constitution, however, works differently. When this Court declares a statute unconstitutional, the statute is essentially stripped of all legal effect, both before and after this Court's decision, excepting only those effects that may be protected by procedural barriers such as statutes of limitation or final judgments. James B. Beam Distilling Co. v Georgia, 501 U.S. 529 (1991). And the procedural barrier of a final judgment should be subject to equitable reconsideration when it operates in a

[9] Of the 124 superreachback companies, 13 were denied refunds on account of "final judgments"; every other company received refunds of any premiums it had paid. Of those 13, nine involved consent judgments pursuant to settlements, and one involved a failure to petition this Court for certiorari. Only three of those companies, including Blue Diamond, refused to waive their constitutional rights under the Fifth Amendment by surrendering their cases; instead they pursued their rights all the way to this Court. This Court accepted the fourth petition from a superreachback company, that of the Eastern Enterprises company. That company, like all but 13 of the superreachback companies, received full, retroactive relief against the unconstitutional effect of the Coal Act.

particularly unequal fashion. See Gondeck v. Pan American World Airways, Inc., 382 U.S. 25 (1965). The Court of Appeals rejected the application of Gondeck solely because that case did not involve the invalidation of a statute under the Constitution.

When this Court invalidates a statute on constitutional grounds, the judicial "interpretation" of that statute does not "change" and often "the judicial interpretation" of the Constitution itself does not even "change." This Court's decision in Eastern Enterprises announced no "change" in the judicial "interpretation" of the Constitution, or of the Coal Act. Rather, it retroactively invalidated the Coal Act as far as the superreachback companies were concerned, and as far as these same defendants were concerned. As a result of Eastern Enterprises, the Coal Act's governmental administrator, the SSA, declared all of its superreachback assessments "void." As a result of Eastern Enterprises, the private administrator of the Coal Act, the Combined Fund, forgave past due premium assessments that would have been owed by several superreachback companies, and refunded all of the premiums that had been paid by most of the rest of them. [10] After this Court had ruled against the Combined Fund, the Combined Fund nevertheless excluded Blue Diamond from a constitutionally compelled remedy, an action which has left the Coal Act's unconstitutional effects in place against Blue Diamond to this day. Blue Diamond respectfully submits that these additional circumstances that follow from the final decision of this Court declaring a federal statute

[10] Similarly to approximately half of the superreachback companies, Blue Diamond paid its statutory premiums on a regular, timely, and monthly basis, despite its objections to the constitutionality of those assessments. Approximately half of the superreachback companies never paid any premiums at all, and now, never will.

unconstitutional, after one or more lower courts have declared otherwise, are entirely capable of characterization as "extraordinary" under Fed.R.Civ.P. 60(b)(6). Such decisions by this Court do not occur, as the court of appeals assumed, on a "common" or everyday basis.

III. This Court Has Not Decided Whether One Of Its Decisions Declaring A Federal Statute Unconstitutional May Be An Extraordinary Circumstance That Warrants Rule 60(b)(6) Examination Of Inconsistent Lower Court Judgments In Favor Of The Same Defendants

This Court has never ruled, or even implied, whether one of its own decisions, invalidating a recently enacted federal statute on constitutional grounds, after the lower courts had declared otherwise in favor of the same defendants, is an "extraordinary circumstance" that may warrant relief from those lower court judgments under Fed.R.Civ.P.60 (b)(6). The Court has observed, in dicta, that "intervening developments in the law by themselves rarely constitute the extraordinary circumstances required for relief under Rule 60(b)(6)." Agostini v. Felton 521 U.S. 203, 239 (1997). However, the Court has never characterized its own retroactive invalidation of a federal statute, or a part thereof, in such terms, or in contrary terms, either. The same treatise cited by this Court in support of its Agostini dicta advises that Rule 60(b)(6) usage would make "perfect sense" to remedy divergent judgments on the constitutionality of a single statute, after this Court authoritatively rules on the constitutionality of the "same statute." See J. Moore, 12 Moore's Federal Practice, § 60.48[5][b], pp.60-181—60-182.1 (3d ed. 1997).

This issue has never been presented to this Court for review, probably because District Court decisions applying Rule 60(b)(6) are reviewed (and should be reviewed) in the Courts of Appeal solely for an abuse of discretion, which ordinarily is an exceedingly difficult hurdle for the unsuccessful party to overcome. For example, the court below, in declaring that this kind of case is not "extraordinary", relied primarily upon similar statements made, in dicta, in Collins v. City of Wichita, 254 F.2d 837 (10th Cir. 1958), in which the district court denied Rule 60(b)(6) relief and the court of appeals merely held the district court did not abuse its discretion. Of particular significance in Collins, in which the movant was attempting to reopen a closed case challenging the constitutionality of a municipal eminent domain proceeding, was the fact that the movant's constitutional rights in that case, to personal notice of the eminent domain proceeding under the Due Process Clause, and to "just compensation" from that proceeding, under the Takings Clause, had been restored to him by the defendant municipality, after this Court ruled that the original newspaper notice, authorized by state statute, was deficient. See Collins, 254 F.2d at 839, n.2. Thus the equities of Rule 60(b)(6) in Collins could not be said, in a limited appellate review, to clearly disfavor the trial court's denial of relief to the movant, who had already had his constitutional rights restored to him. No review was sought in this Court. See also Marshall v. Board of Education, 575 F.2d 417 (3d Cir.1978) (District Court properly denied Rule 60(b)(6) relief to litigant who had failed to exhaust its appellate remedies against an earlier, erroneous constitutional judgment). Accordingly, this issue has never been presented here. Because the continued effectiveness of an incorrect judgment upholding the constitutionality of a federal statute, a problem which was not present in Collins, supra, concerns nothing less

than the continued denial of constitutional rights, this Court should consider this important federal issue.

CONCLUSION

This petition for a writ of certiorari should be granted.

Respectfully submitted,

By:
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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

[September 21, 2000, Argued]
[May 3, 2001, Decided]
[May 3, 2001, Filed]

Nos. 99-6110/99-6111

BLUE DIAMOND COAL CO.,
Plaintiff-Appellee,

v.

TRUSTEES OF THE UMWA COMBINED BENEFIT FUND,
Defendant-Appellant
(99-6110)

SECRETARY OF HEALTH AND HUMAN SERVICES,
Defendant-Appellant
(99-6111).

Before: BOGGS and SUHRHEINRICH, Circuit Judges; ALDRICH, District Judge.*

OPINION

ALDRICH, District Judge. Defendant-Appellants, the Secretary of Health and Human Services and the Trustees of the United Mine Workers of America Combined Benefit Fund appeal a district court's order vacating a prior judgment under Fed. R. Civ. P. 60(b)(6). For the following reasons, we REVERSE the order of the district court and REMAND the case with instructions for the re-entry of final judgment in favor of the defendant-appellants.

I.

This appeal arises out of litigation concerning the constitutionality of the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act"), 26 U.S.C. § § 9701-9722. The factual circumstances surrounding the adoption of the Coal Act and its applicability to the plaintiff-appellee, Blue Diamond Coal Company ("Blue Diamond"), have been explained in detail by the Supreme Court in *Eastern Enterprises v. Apfel*, 524 U.S. 498, 504-14, 141 L. Ed. 2d 451, 118 S. Ct. 2131 (1998), and by this Circuit in *In re Blue Diamond Coal Co.*, 79 F.3d 516, 518-20 (6th Cir. 1996).

Since the 1930s, the coal industry has been negotiating with the United Mine Workers of America (the "UMWA") concerning employee health benefits. Through a series of

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* The Honorable Ann Aldrich, United States District Judge for the Northern District of Ohio, sitting by designation.

collective bargaining agreements; beginning with the Krug-Lewis Agreement of 1946, several funds were established to provide health benefits for coal miner retirees and their families. Benefits were funded on a "pay as you go" basis by assessing a royalty on coal production. Due to numerous circumstances - including an increase in benefits, opt-out provisions in the collective bargaining agreements, the rapid escalation of health care, the retirement of a generation of miners and a decline in coal production - these various health benefit funds faced financial ruin in the late 1980s.

Consistent with a long history of federal mediation between the UMWA and the coal industry, Congress passed the Coal Act to ensure the continuation of medical health benefits to coal miner retirees and their families. This Act consolidated the several health benefit funds into the UMWA Combined Benefit Fund (the "Combined Fund"). Instead of the "pay as you go" funding structure, the Coal Act assigned an individual miner and his eligible dependants to a particular coal company based on criteria such as the length of employment with that company and whether that company participated in previous collective bargaining agreements. Existing coal companies were also required to pay an additional premium to cover retirees who were "orphaned" when the employers responsible for their health benefits went out of business.

To prevent the consolidation of liability upon a relatively small number of coal producers, the Coal Act also contained what has become known as a "super reachback" provision, 28 U.S.C. § 9706(a)(3). *See Lindsey Coal Mining Co. v. Shalala*, 901 F. Supp. 959, 968 n.2 (W.D. Penn. 1995); *In re Blue Diamond Coal Co.*, 174 B.R. 722, 724

(E.D. Tenn. 1994). Under this provision, companies were assigned the health benefit liabilities of a coal miner retiree based upon his length of employment with that company under pre-1978 collective bargaining agreements. *See* 28 U.S.C. § 9706(a)(3). Consequently, super reachback companies became responsible for health benefits under the Combined Fund despite having opted out of UMWA collective bargaining agreements and previous health benefit funds for many years.

Blue Diamond, a coal mining company located in Knoxville, Tennessee, and a reorganized debtor under Chapter 11 of the Bankruptcy Code, was one of the companies affected by the super reachback provision of the Coal Act. Though Blue Diamond has been in the coal mining business for over fifty years, it has not been party to a UMWA collective bargaining agreement, nor has it employed union labor, since 1964. Nonetheless, under § 9706(a)(3), Blue Diamond was responsible for the health benefits of approximately 1400 living beneficiaries despite having opted out of the collective bargaining agreements assigning health benefit liability almost three decades ago.

Given this retroactive allocation of liability, the constitutionality of the super reachback provision of the Coal Act was highly contested. Blue Diamond was one of the first corporations to test the Act, arguing that such retroactive liability was an unconstitutional taking and a violation of due process. In *In re Blue Diamond Coal Co.*, 174 B.R. 722 (E.D. Tenn. 1994), the district court upheld the constitutionality of the Coal Act, entering a final judgment against Blue Diamond and in favor of the government and the Combined Fund. Blue Diamond appealed and this Circuit,

consistent with the rulings of other circuit courts to address the issue, upheld the constitutionality of the Act and affirmed the judgment of the district court. *See In re Blue Diamond Coal Co.*, 79 F.3d 516; *see also Davon Inc. v. Shalala*, 75 F.3d 1114 (7th Cir. 1996); *Eastern Enterprises v. Chater*, 110 F.3d 150 (1st Cir. 1997). Blue Diamond then appealed to the Supreme Court, which denied certiorari on January 6, 1997. *See Blue Diamond Coal Co. v. Chater*, 519 U.S. 1055, 136 L. Ed. 2d 608, 117 S. Ct. 682 (1997).

However, on June 25, 1998, the Supreme Court decided *Eastern Enterprises v. Apfel*, 524 U.S. 498, 141 L. Ed. 2d 451, 118 S. Ct. 2131 (1998). In that case, *Eastern Enterprises*, a company assigned liability under § 9706(a)(3), challenged that provision of the Coal Act as a violation of the Takings Clause and due process. The Supreme Court held that § 9706(a)(3) was unconstitutional as applied, but was deeply divided in its reasoning. Writing for a four-justice plurality, Justice O'Connor found that the super reachback provision of the Coal Act amounted to an unconstitutional taking under the Fifth Amendment. *See id.* at 522-38. Justice Kennedy, concurring in part and dissenting in part, refused to extend a Takings Clause analysis to economic legislation that did not impinge a specific property right, and instead found that § 9706(a)(3) was a rare example of congressional legislation running afoul of due process. *See id.* at 547-50. Justice Breyer, writing for a four-justice dissent, agreed with Justice Kennedy that the Takings Clause does not extend to economic legislation such as the Coal Act, but found that § 9706(a)(3) did not violate due process. *See id.* at 526.

Consistent with the ruling in *Eastern Enterprises*, the government ended all payment proceedings for the coal

companies affected by the super reachback provision of the Coal Act, including Blue Diamond. This included waiving the debt of companies that had failed to pay premiums to the Combined Fund before the ruling in *Eastern Enterprises*, as well as refunding the premiums of those companies that had made payments into the Combined Fund pursuant to the super reachback provision. However, the government and the Combined Fund refused to refund those companies that had paid premiums pursuant to a *pre-Eastern Enterprises* final judgment or settlement - thirteen companies in all, including Blue Diamond.

By mid-1998, Blue Diamond had paid $14,613,798.08 into the Combined Fund pursuant to the district court's 1994 order. As a result of the decision in *Eastern Enterprises*, Blue Diamond brought a motion under Rule 60(b)(6) of the Federal Rules of Civil Procedure seeking post judgment relief on August 28, 1998. The district court granted the motion, vacated the prior judgment, and restored the case to the active docket. The Combined Fund subsequently sought and was eventually granted certification for interlocutory appeal under 28 U.S.C. § 1292(b). On appeal, both the government and the Combined Fund argue that the district court improperly granted Rule 60(b)(6) relief.

II.

Rule 60(b) allows a district court to vacate a final judgment for the following reasons:

> (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not

> have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

A district court's grant of post-judgment relief under Rule 60(b) is reviewed for an abuse of discretion. *See Browder v. Director, Dep't of Corrections,* 434 U.S. 257, 263 n.7, 54 L. Ed. 2d 521, 98 S. Ct. 556 (1978); *Windsor v. United States Dep't of Justice,* 740 F.2d 6, 7 (6th Cir. 1984). A finding of an abuse of discretion requires "a definite and firm conviction that the trial court committed a clear error of judgment." *Davis v. Jellico Community Hosp., Inc.,* 912 F.2d 129, 133 (6th Cir. 1990) (citations omitted). However, relief under Rule 60(b) is "circumscribed by public policy favoring finality of judgments and termination of litigation." *Waifersong Ltd., Inc. v. Classic Music Vending,* 976 F.2d 290, 292 (6th Cir. 1992). This is especially true in an application of subsection (6) of Rule 60(b), which applies "only in exceptional or extraordinary circumstances which are not addressed by the first five numbered clauses of the Rule." *Olle v. Henry & Wright Corp.,* 910 F.2d 357, 365 (6th Cir. 1990); *see also Liljeberg v. Health Services Acquisition Corp.,* 486 U.S. 847, 863-64, 100 L. Ed. 2d 855, 108 S. Ct. 2194 (1988). This is because "almost every conceivable

ground for relief is covered" under the other subsections of Rule 60(b). *Olle,* 910 F.2d at 365; *see also Hopper v. Euclid Manor Nursing Home, Inc.,* 867 F.2d 291, 294 (6th Cir. 1989). Consequently, courts must apply Rule 60(b)(6) relief only in "unusual and extreme situations where principles of equity mandate relief." *Olle,* 910 F.2d at 365.

III.

It is well established that a change in decisional law is usually not, by itself, an "extraordinary circumstance" meriting Rule 60(b)(6) relief. *See Agostini v. Felton,* 521 U.S. 203, 239, 138 L. Ed. 2d 391, 117 S. Ct. 1997 (1997) ("Intervening developments in the law by themselves rarely constitute the extraordinary circumstances required for relief under Rule 60(b)(6) . . . ."); *Cincinnati Ins. Co. v. Flanders Elec. Motor Serv., Inc.,* 131 F.3d 625, 628-29 (7th Cir. 1997); *Travelers Indemnity Co. v. Sarkisian,* 794 F.2d 754, 757 (2d Cir. 1986); *Berryhill v. United States,* 199 F.2d 217, 219 (6th Cir. 1952). This principle holds even if a law is invalidated on state or federal constitutional grounds. *See Batts v. Tow-Motor Forklift Co.,* 66 F.3d 743, 748-49 (5th Cir. 1995) ("Changes in decisional law based on constitutional principles are not of themselves extraordinary circumstances sufficient to justify Rule 60(b)(6) relief."); *Collins v. City of Wichita,* 254 F.2d 837, 838-39 (2d Cir. 1958) (holding that invalidation by the United States Supreme Court of Kansas statute that was basis of previous final judgment insufficient to establish "extraordinary circumstances" to merit Rule 60(b)(6) relief). Instead, courts have relied on an applicable change in decisional law, coupled with some other special circumstance, in order to grant Rule 60(b)(6) relief. *See Ritter v. Smith,* 811 F.2d 1398, 1401 (11th Cir. 1987) ("Our

investigation thus leads us to conclude that something more than a 'mere' change in the law is necessary to provide the grounds for Rule 60(b)(6) relief."); *Matarese v. LeFevre*, 801 F.2d 98, 106 (2d Cir. 1986) ("We think it particularly appropriate for the district court to entertain a Rule 60(b)(6) motion . . . in the context of a habeas proceeding in which conventional notions of finality of litigation have no place.") (internal quotes and citations omitted); *Overbee v. Van Waters & Rogers*, 765 F.2d 578, 580 (6th Cir. 1985) (holding that since the judgment was not final, and the Ohio Supreme Court reversing itself within one year was unusual, the district court abused its discretion in not granting Rule 60(b)(6) relief).

The district court bases much of its decision on a line of cases establishing that post-judgment relief can be granted when a change in decisional law generates divergent judgments for litigants involved in the same transaction or injury. *See Blue Diamond Coal Co. v. Secretary of Health and Human Services*, No. 3:93-CV-473, slip op. at 19 (E.D. Tenn. Nov. 4, 1998); *see also Gondeck v. Pan Am. World Airways*, 382 U.S. 25, 27, 15 L. Ed. 2d 21, 86 S. Ct. 153 (1965) (granting post-judgment relief where divergent results for the survivors of two people killed in the same car accident resulted from a circuit split in statutory interpretation); *Pierce v. Cook & Co.*, 518 F.2d 720, 723 (10th Cir. 1975) (granting Rule 60(b)(6) relief where divergent results for two plaintiffs injured in the same car accident resulted from choice of federal rather than state forum, since federal court based its decision on state law subsequently overturned by Oklahoma Supreme Court in related case); *First Am. Nat'l Bank v. Bonded Elevator, Inc.*, 111 F.R.D. 74, 75 (W.D. Ky. 1986) (granting Rule 60(b)(6) relief where divergent outcomes for two plaintiffs seeking recovery under the same promissory

note resulted from choice of federal rather than state forum, since federal court based its decision on state law subsequently invalidated by Kentucky Supreme Court in related case); *Norman v. Nichiro Gyogyo Kaisha, Ltd.*, 761 P.2d 713, 717 (Alas. 1988) (granting post-judgment relief under Alaska rule identical to Rule 60(b)(6) where divergent outcome for two plaintiffs seeking recovery under the same shareholders agreement resulted from subsequently invalidated interpretation of Alaska law in related case).

Blue Diamond argues that this "same transaction" line of cases is applicable in this case. Blue Diamond states "[the] substantially identical . . . historical contractual activity with the UMWA . . . which brought [the coal industry] into the [the super reachback provision's] retroactive grasp" suggests that the numerous coal companies affected by the 1992 Coal Act were multiple parties to a common transaction. Blue Diamond's Final Br. at 15. Blue Diamond further argues that even though the alleged common transaction in this case, the Coal Act, is not a "tortious accident" or "common contract," such authority applies since this Court must not privilege "tort law principles" over the "equal application of constitutional rights." *Id.* at 18-19, *citing* Parnell v. Rapides Parish Sch. Bd., 563 F.2d 180, 185 (5th Cir. 1977) ("[The Constitution is] not geared to patchwork geography. It tolerates no independent enclaves."). Consequently, Blue Diamond argues, the "same transaction" reasoning is applicable here since "multiple parties injured contemporaneously in a common transaction will receive fundamentally different measures of legal protection . . . solely because . . . their claims went to final adverse judgments before the law applicable to the entire transaction was authoritatively clarified." *Id.*

Blue Diamond's arguments, though novel, are not persuasive. While courts might have discretion under Rule 60(b)(6) to resolve divergent judgments in the "same transaction," such reasoning is inapplicable here. As an initial matter, two of the cases cited by Blue Diamond and the district court base much of their justification for post-judgment relief on the outcome-determinative test of *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 82 L. Ed. 1188, 58 S. Ct. 817 (1938). *See Pierce*, 518 F.2d at 723 ("In diversity jurisdiction cases the results in federal court should be substantially the same as those in state court litigation arising out of the same transaction or occurrence."); *First Am. Nat'l Bank*, 111 F.R.D. at 75 (same). Since this case does not deal with divergent results stemming from a choice of a federal rather than a state forum, these cases are clearly distinguishable.

More important, the cases cited by Blue Diamond and the district court involve transactions with a much tighter nexus of common activity, common rights, and common liability than a law passed by Congress to regulate the payment of medical health benefits to the retirees of an entire industry. To be sure, the shared history of the various companies affected by the super reachback provision of the 1992 Coal Act define a fixed and identifiable universe of affected parties. *See* Blue Diamond's Final Br. at 15. However, the nature and extent of the liability formerly imposed by the super reachback provision varies with each particular company's involvement with the several health benefit funds which preceded the Combined Fund. *See Eastern Enterprises*, 524 U.S. at 504-16 (detailing the events leading to the passage of the 1992 Coal Act); *In re Blue Diamond Coal Co.*, 79 F.3d at 519-20 (describing assignment

of liability under § 9706 of the Coal Act). Moreover, each company's particular involvement with these previous funds was established over the course of several decades in a series of discrete and separate collective bargaining negotiations with the UMWA. *See Eastern Enterprises,* 524 U.S. at 504-16. In short, Blue Diamond's arguments - that the common history of negotiation between the coal industry and the UMWA leading to the passage of the Coal Act constitutes a "common transaction" - contain no limiting principle analogous to a singular event, such as a car accident, or a singular contract, such as a shareholders agreement. *See Gondeck*, 382 U.S. at 27 (car accident); *Norman,* 761 P.2d at 717 (shareholders agreement).

The district court itself recognized the difficulties of applying the "same transaction" line of cases to the current situation. *See Blue Diamond Coal Co.,* No. 3:93-CV-473, slip op. at 19 (stating "the Court recognizes that this is not a 'same accident' case . . . ."). However, the district court stated "One could argue that all super-reachback companies were part of the same transaction and that their cases have resulted in conflicting judgments." *Id.* This Court cannot accept such an extension of relevant authority. If the circumstances of this case establishes the "same transaction," it is difficult to imagine any company, whose industry is subject to extensive federal regulation, that would not be entitled to Rule 60(b)(6) relief upon a change in the judicial interpretation of the applicable law. For example, the airline industry, the automobile manufacturing industry, and the telecommunications industry are all linked by their respective common histories - histories that include extensive federal regulation and federal involvement. Moreover, changes in the judicial interpretation of the law are common, and necessarily

result in divergent judgments. Allowing all these companies to seek Rule 60(b)(6) relief based on the notion that their "common history" led to the passage of a particular law or regulation, which is subsequently invalidated due to a change in judicial interpretation, necessarily resulting in divergent judgments, would render our legal system's strong presumption in favor of the "finality of judgments and termination of litigation" meaningless. *Waifersong Ltd., Inc.*, 976 F.2d at 292.

Nor is this Court persuaded that refusal to extend the "same transaction" line of cases to this situation is tantamount to privileging "tort law principles" over the "equal application of constitutional rights." Blue Diamond's Final Br. at 18-19. This Court recognizes that, generally speaking, our system of law does not privilege certain rights, constitutional or not, over others. *See Butz v. Economou,* 438 U.S. 478, 523, 57 L. Ed. 2d 895, 98 S. Ct. 2894 (1978) (Rehnquist, J., concurring in part and dissenting in part) ("That the Framers thought some rights sufficiently susceptible of legislative derogation that they should be enshrined in the Constitution does not necessarily indicate that the Framers likewise intended to establish an immutable hierarchy of rights in terms of their importance to individuals."). Such criticism, however, is inapplicable in this case. Our refusal to extend the "same transaction" reasoning is simply a recognition that liability formerly assigned under the super reachback provision of the Coal Act is not a common transaction similar to a car accident or a shareholders agreement. *See Gondeck,* 382 U.S. at 27; *Norman,* 761 P.2d at 717.

In addition to relying on the "same transaction" line of cases, the district court also cites three factors which militate in favor of granting Rule 60(b)(6) relief:

> (1) the amount of money involved (over Fourteen Million from a reorganized Chapter 11 debtor); (2) the unfairness of the fact that Blue Diamond may be the only super-reachback coal company to have paid anything into the Combined Fund; and finally (3) the fact that the Coal Act itself directs the Combined Fund to "repay" premiums paid pursuant to assignments made in error.

Blue Diamond Coal Co., No. 3:93-CV-473, slip op. at 21. However, two of these three factors are inapplicable in this case. The second factor, that Blue Diamond is alone in its payment to the Combined Fund, is a clear error. Documents furnished to this Court on appeal establish that thirteen companies, including Blue Diamond, have not received a refund of premiums from the Combined Fund due to a *pre-Eastern Enterprises* final judgment or settlement. *See* Corrected J.A., vol. 2 (sealed) at 403. The third factor, that the Coal Act directs the Combined Fund to "repay" premiums made in error, is also inapplicable. Under 26 U.S.C. § 9706(f), companies may challenge an assignment of the health benefit liability of a particular coal miner retiree by requesting the Commissioner of Social Security to furnish "detailed information as to the work history of the beneficiary and the basis of the assignment." 26 U.S.C. § 9706(f)(1). Clearly, this section of the Coal Act deals with a review of the particular facts concerning a particular retiree, and does not

contemplate the general applicability or constitutionality of the super reachback provision.

Consequently, only the first factor, the amount of money paid by Blue Diamond to the Combined Fund pursuant to the final judgment, is relevant. This Court notes that the amount Blue Diamond has paid to the Combined Fund is significantly larger than any of the other twelve companies which did not receive a refund of premiums due to a final judgment or settlement. Blue Diamond has paid over $ 14.5 million to the Combined Fund in accordance with the final judgment in *In re Blue Diamond Coal Co.*, 174 B.R. 722, whereas the next closest amount paid by any other company is approximately $ 2.4 million. *See* Corrected J.A., vol. 2 (sealed) at 403.

However, the amount of money Blue Diamond has paid to the Combined Fund in this case, though substantial, is not by itself sufficient reason for a district court to grant Rule 60(b)(6) relief. This Court, consistent with other courts, has previously held that "payment of money damages pursuant to the consent judgment simply does not rise to the level of an excessive burden or hardship warranting [] extraordinary relief provided by Rule 60(b)(6)." *Waste Conversion, Inc. v. Kelley,* 19 F.3d 1435, 1994 WL 119431, at *4 (6th Cir. 1994); *see also In re Fine Paper Antitrust Litigation,* 840 F.2d 188, 194 (3d Cir. 1988) (holding "final money judgment" not an extraordinary circumstance meriting Rule 60(b)(6) relief where party failed to appeal, but some other party's appeal on same legal grounds was granted). Indeed, one other district court contemplating Rule 60(b)(6) relief for a super reachback company affected by a pre-*Eastern Enterprises* decision has noted the difficulties of basing such

relief on the amount of money paid. *See Templeton Coal Co., v. Apfel,* No. TH 93-158-C-T/H, slip op. at 18-19 (S.D. Ind. Nov. 17, 1999) (noting that if Rule 60(b)(6) relief were based solely on amount of money paid, courts would have to establish an appropriate threshold amount for such relief, and whether such relief should be compared against a party's net worth).

Moreover, other interests not contemplated by the district court favor adhering to the final judgment of this case. Courts have noted that Rule 60(b)(6) relief is especially appropriate in cases where the interest in finality is somehow abrogated. *See Adams v. Merrill Lynch,* 888 F.2d 696, 698, 702 (10th Cir. 1989) (holding Rule 60(b)(6) relief appropriate where decisional law concerning dismissed arbitration claims changed while other claims were still pending before the district court); *Ritter,* 811 F.2d at 1401-02 (holding Rule 60(b)(6) relief appropriate where "erroneous final judgment of this court had not been executed"); *Matarese,* 801 F.2d at 106 (holding habeas proceedings have no "conventional notions of finality"); *Overbee,* 765 F.2d at 580 (holding Rule 60(b)(6) relief appropriate where judgment not final). Courts have also granted Rule 60(b)(6) relief when a dispositive change in decisional law occurs while a timely appeal is still pending. *See Batts,* 66 F.3d at 748 n.6 (noting changes in decisional law may justify post-judgment relief where an appeal of the case is pending) *citing Wilson v. Al McCord, Inc.,* 858 F.2d 1469, 1478-79 (10th Cir. 1988); *United States ex rel. Thomas v. Gramley,* 986 F. Supp. 502, 505 (N.D. Ill. 1997) (noting Rule 60(b)(6) relief granted where dispositive change in decisional law occurred while case was pending timely appeal; interest in enhancing efficiency and promoting the smooth flow of litigation justify relief where appeal court

is highly likely to reverse decision). This interest in finality is related to another equitable interest - that parties rely on final judgments once the disputes have been fully and vigorously adjudicated. *See Chicot County Drainage Dist. v. Baxter State Bank,* 308 U.S. 371, 375, 84 L. Ed. 329, 60 S. Ct. 317 (1940) (noting that "Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly" are important considerations weighed against "an all inclusive statement of a principle of absolute retroactive invalidity"); *Ritter,* 811 F.2d at 1401-02 (noting there is a "greater interest in finality" once a judgment is executed given that parties rely on those outcomes).

In this case, the interest in finality is undisputed. The district court's decision in *In re Blue Diamond Coal Co.,* 174 B.R. 722, disposed of all of Blue Diamond's claims in a fully executed final judgment. Blue Diamond's appeal was also disposed of by this Court, and the Supreme Court, before the change in decisional law was announced in *Eastern Enterprises. See In re Blue Diamond Coal Co.,* 79 F.3d 516, *cert. denied,* 519 U.S. 1055, 136 L. Ed. 2d 608, 117 S. Ct. 682. Moreover, the reliance interest of the Combined Fund on the previous final judgment is substantial. Four years had elapsed between the district court's declaratory judgment and its subsequent grant of post-judgment relief. During that time, payments made to the Combined Fund pursuant to the previous decision were used to cover the medical health benefits of numerous retirees. Given the public policy in favor of the finality of judgment, and the length of time between final judgment and Rule 60(b)(6) relief, equity clearly favors adhering to the district court's final judgment.

As a final note, this Court recognizes that the decision to grant Rule 60(b)(6) relief is a case-by-case inquiry that requires the trial court to intensively balance numerous factors, including the competing policies of the finality of judgments and the "incessant command of the court's conscience that justice be done in light of all the facts." *Griffin v. Swim-Tech Corp.*, 722 F.2d 677, 680 (11th Cir. 1984) (citations omitted). Our decision today is merely a determination that, in this case, the district court abused its discretion in granting such relief.

IV.

Accordingly, the district court's decision to grant post-judgment relief is REVERSED. The case is REMANDED to the district court for the re-entry of final judgment in favor of the defendant-appellants.

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE AT KNOXVILLE

[Filed November 4, 1998]

NO. 3:93-CV-473

IN RE: BLUE DIAMOND COAL COMPANY,	)
Debtor,	)
BLUE DIAMOND COAL COMPANY	)
v.	)
DONNA E. SHALALA, Secretary of Health and Human Services, and ... TRUSTEES OF THE UNITED MINE WORKERS' OF AMERICA COMBINED BENEFIT FUND	)

ORDER

Pursuant to a memorandum opinion this day passed to the Clerk for filing, Blue Diamond's motion to vacate this Court's judgment of November 9, 1994, [Doc. 62], is hereby **GRANTED** and this action is **RESTORED** to the Court's active docket for further proceedings.

ENTER:

/s/_____
Thomas G. Hull
United States District Judge

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE AT KNOXVILLE

[Filed November 4, 1998]

NO. 3:93-CV-473

IN RE: BLUE DIAMOND COAL COMPANY,	)
Debtor,	)
BLUE DIAMOND COAL COMPANY	)
v.	)
DONNA E. SHALALA, Secretary of Health and Human Services, and ... TRUSTEES OF THE UNITED MINE WORKERS' OF AMERICA COMBINED BENEFIT FUND	)

MEMORANDUM OPINION

This was an adversary proceeding in which Blue Diamond Coal Company,[1] a reorganized Chapter 11 Debtor, challenged the constitutionality of the "super-reachback" provision of the Coal Industry Retiree Health Benefit Act of 1992 (the Coal Act), 26 U.S.C. § § 9701 et seq. In an Order of November 9, 1994, this Court found that the challenged provision violated neither the Due Process nor the Takings Clauses of the Fifth Amendment and, therefore, was not unconstitutional. The United States Court of Appeals for the Sixth Circuit affirmed in an opinion filed on March 21, 1996, *In re Blue Diamond Coal Co.,* 79 F.3d 516 (6th Cir. 1996), and the United States Supreme Court denied certiorari. *Blue Diamond Coal Company v. Chater,* 519 U.S. 1055, 117 S. Ct. 682, 136 L. Ed. 2d 608 (1997). A year later, the Supreme Court decided *Eastern Enterprises v. Apfel,* 524 U.S. 498, 118 S. Ct. 2131, 141 L. Ed. 2d 451 (1998), and, in a plurality opinion authored by Justice O'Connor, found the "super-reachback" provision of the Coal Act unconstitutional as applied to the plaintiff in that case. Four justices found it effected an unconstitutional "taking." One found that the application of the Coal Act to Eastern would violate due process principles because of the unprecedented scope of its retroactivity.[2]

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[1] Blue Diamond is now BDCC Holding Company.

[2] Justice Kennedy, who concurred in the judgment but not in the reasoning, was of the opinion that the Takings Clause did not apply because the challenged provision did not operate on or alter an identified property interest (such as a parcel of real estate, a valuable interest in an intangible such as an intellectual property, or

The facts in *Eastern Enterprises* are not materially different from those in Blue Diamond's case. There is no question that, if certiorari had been granted in Blue Diamond's case, our decision would have been overruled.

Not surprisingly, Blue Diamond is back before this Court on a motion to vacate our judgment of November 9, 1994, pursuant to Rule 60(b)(6), Federal Rules of Civil Procedure. [Doc. 62]. It would have this action restored to the Court's active docket for further proceedings.

Rule 60(b) permits a court to grant relief from a judgment or order for any of the following grounds: (1) mistake, (2) newly discovered evidence, (3) fraud, (4) a void judgment, (5) a satisfied, released or discharged judgment, or when a prior judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that a judgment should have prospective effect, and, finally, (6) for "any other reason justifying relief from the operation of the judgment."

None of the first five grounds for relief appear to apply to this case and Blue Diamond's best hope is to come

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even a specific bank account or accrued interest). He pointed out that the Takings Clause operates not as a bar but as a conditional limitation on the government, permitting it to do what it wants so long as it pays the charge. In other words, it presupposes that what the government intends to do is otherwise constitutional. See: *Eastern Enterprises,* 118 S. Ct. at 2154-2157. The four dissenting justices (who would have upheld the constitutionality of the super-reachback provision) also were of the opinion that this was not a Takings Clause case.

under the "any other reason" catch-all of Rule 60(b)(6).

Rule 60(b)(6) "vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice." *Klapprott v. United States,* 335 U.S. 601, 615, 93 L. Ed. 266, 69 S. Ct. 384 (1949). (In Klapprott, a naturalized citizen was allowed to have a four-year-old default judgment of denaturalization set aside upon a showing that he had been sick, indigent and imprisoned at the time the judgment was entered.) However, the United States Court of Appeals for the Sixth Circuit has held that Rule 60(b)(6) should apply "only in exceptional or extraordinary circumstances which are not addressed by the first five numbered clauses of the Rule" and "only as a means to achieve substantial justice when 'something more' than one of the grounds contained in the Rule 60(b)'s first five clauses is present." *Olle v. Henry & Wright Corporation,* 910 F.2d 357, 365 (6th Cir. 1990); *Hopper v. Euclid Manor Nursing Home, Inc.,* 867 F.2d 291, 294 (6th Cir. 1989). The "something more" must include unusual and extreme situations where principles of equity mandate relief. *Olle*, at 365.

The question before the Court is whether or not this case presents one of those "unusual and extreme situations where principles of equity mandate relief." Blue Diamond insists that it does.

In support of its motion, Blue Diamond advises the Court that from October of 1993, through June of 1998 (when *Eastern Enterprises* was decided), and pursuant to this Court's judgment, it paid Fourteen Million, Six Hundred Thirteen Thousand, Seven Hundred Ninety-Eight Dollars and Eight

Cents ($ 14,613,798.08) in premiums to the United Mine Workers of America Combined Benefit Fund pursuant to 26 U.S.C. § 9706(a)(3), as required by the Coal Act. However, in July of 1998, the Associate Commissioner for Program Benefits of Social Security declared (in a related lawsuit still pending in this Court, No. 2:97-CV-263) that the assignments of Combined Fund beneficiaries to Blue Diamond under the Coal Act were "void" under the provision of the Supreme Court's decision in the *Eastern Enterprises* case and that Blue Diamond had no further obligation to the Combined Fund. Presumably, therefore, Blue Diamond seeks retrospective, not prospective, relief from the judgment it would vacate.

In further support of its motion, Blue Diamond also advises the Court that, while it was complying with the law controlling it at that time, and making its payments to the Combined Fund, other similarly situated, "super-reachback" coal companies made no payments whatsoever and now will never be required to do so. Under these circumstances, any operation of this Court's previous judgment against Blue Diamond is unfair, inequitable and unjust both as a matter of Fifth Amendment law and pursuant to ordinary common law principles of equity, fairness and justice.

Kenneth S. Apfel, Commissioner of Social Security, and the Trustees of the Combined Fund make the argument that there is nothing either exceptional or extraordinary in a final decision such as ours turning out to be inconsistent with some later controlling appellate decision, particularly when, as here, the question presented was a close and difficult one. They cite *Berryhill v. United States,* 199 F.2d 217, 219 (6th Cir. 1952), for the proposition that a change in the judicial view of the applicable law, after a final judgment, is not a

basis for vacating a judgment entered before announcement of the change. The Trustees also cite *Collins v. City of Wichita, Kansas,* 254 F.2d 837, 839 (10th Cir. 1958), and *Usery v. Board of Regents for Oklahoma Agricultural and Mechanical College,* 1976 U.S. Dist. LEXIS 11927, 22 Fed. R. Serv. 2d (Callaghan) 1474 (E.D. Okla. 1976), for the proposition that a subsequent decision declaring unconstitutional the statute upon which a prior judgment was based is not grounds for Rule 60(b)(6) relief.

While the Court is fully aware of the chaos that would ensue if otherwise final judgments were reopened every time there was a change in the judicial view of applicable law, it is somewhat unfair to characterize the decision in *Eastern Enterprises* as merely a change in the judicial view of the applicable law. When this Court addressed Blue Diamond's challenge to the constitutionality of the super-reachback provision of the Coal Act, there was no controlling judicial interpretation of the challenged provision and the Court was writing on a clean slate. One could argue that the applicable law was first announced, albeit rather unclearly, in the *Eastern Enterprises* decision.

In another argument, the Trustees of the Combined Fund concede that the Supreme Court found the "super-reachback" provision unconstitutional, but point out that only four of the justices thought the act was unconstitutional as an uncompensated "taking"; five of the Eastern justices expressed the opinion that the "takings" or "just compensation" clauses of the Fifth Amendment to the Constitution do not apply to economic regulatory measures such as the Coal Act. For this reason, they argue that Blue Diamond's insistence that it is the victim of an uncompensated

"taking" (and is therefore entitled to just compensation) is not valid. While only four justices found the super-reachback provision an unconstitutional "taking," it appears that, in our circuit at least, that finding would be deemed to be the basis for the ruling. *See*: *DLS, Inc. v. City of Chattanooga,* 107 F.3d 403, 408, fn.4 (6th Cir. 1997); *Triplett Grille, Inc. v. City of Akron,* 40 F.3d 129 (6th Cir. 1994). The main purpose of the Takings Clause of the Fifth Amendment is to bar the government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole. *Penn Central Transportation Co. V. City of New York,* 438 U.S. 104, 123-124, 57 L. Ed. 2d 631, 98 S. Ct. 2646 (1978). If, in fact, Blue Diamond is the only super-reachback company to bear this public burden, the Court must conclude that Blue Diamond was "taken" for over Fourteen Million Dollars.

The Court is aware that district courts have been reversed on abuse of discretion grounds for granting Rule 60(b)(6) relief, see: *DeWeerth v. Baldinger,* 38 F.3d 1266 (2nd Cir. 1994). Nevertheless, the fact that we have such a rule on the books means that district courts must have some discretion to grant relief from their judgments. For example, courts have granted post-judgment relief in "same accident" cases to harmonize the legal outcome for victims of the same motor vehicle accident, *Gondeck v. Pan American World Airways, Inc.,* 382 U.S. 25, 86 S. Ct. 153, *15 L. Ed. 2d 21 (1965); Pierce v. Cook & Company,* 518 F.2d 720 (10th Cir. 1976, en banc), and also to harmonize the results for parties of a common contractual transaction. *First American National Bank of Nashville v. Bonded Elevator, Inc.,* 111 F.R.D. 74 (W.D. Ky 1986).

While the Court recognizes that this is not a "same accident" case, in *Batts v. Tow-Motor Forklift Co.*, 66 F.3d 743, 748 fn. 6 (5th Cir. 1995), the Fifth Circuit suggested that Rule 60(b)(6) relief may be warranted where the subsequent court decision is closely related to the case in question or where two cases arising out of the same transaction result in conflicting judgments. One could argue that all the super-reachback companies were part of the same transaction and that their cases have resulted in conflicting judgments.

In the *Gondeck* case, the United States Supreme Court, quoting a prior decision, *United States v. Ohio Power Company,* 353 U.S. 98, 77 S. Ct. 652, 1 L. Ed. 2d 683 (1957), said that "the interest in finality of litigation must yield where the interests of justice would make unfair the strict application of our rules." 382 U.S. at 26-27.

The Court is convinced that it would be unfair to allow its previous judgment to stand. Among the factors which militate in favor of extraordinary relief are: 1) the amount of money involved (over Fourteen Million from a reorganized Chapter 11 debtor); 2) the unfairness of the fact that Blue Diamond may be the only super-reachback coal company to have paid anything into the Combined Fund; and finally 3) the fact that the Coal Act itself directs the Combined Fund to "repay" premiums paid pursuant to assignments made in error. 26 U.S.C. § 9706(f)(3)(A). With regard to this last factor, the Court recognizes that the assignments may not have been made in error but have now been voided. Whether or not the Trustees of the Combined Fund must now repay Blue Diamond, or whether the Secretary of Health and Human Services must make a "just compensation" will be

decided on another day after the parties have had time to brief this issue.

Nevertheless, Blue Diamond's motion will be granted; this Court's judgment of November 9, 1994, will be vacated and this action will be restored to the Court's active docket for further proceedings.

An appropriate Order will follow.

ENTER:

/s/_____
THOMAS G. HULL
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE

[Filed November 9, 1994]

NO. CIV-3-93-473

IN RE: BLUE DIAMOND COAL COMPANY,
Debtor,

BLUE DIAMOND COAL COMPANY

v.

DONNA E. SHALALA, Secretary of Health and Human Services, and ...

TRUSTEES OF THE UNITED MINE WORKERS' OF AMERICA COMBINED BENEFIT FUND

ORDER

Pursuant to an Opinion this day passed to the Clerk for filing, Blue Diamond's motion for summary judgment is DENIED; the motions filed by the Secretary of Health and Human Services and by the Trustees of the Combined Benefit Fund are hereby GRANTED; and this action is DISMISSED.

ENTER:

/s/_____
Thomas G. Hull
United States District Judge

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE

[Filed November 9, 1994]

NO. CIV-3-93-473

IN RE: BLUE DIAMOND COAL COMPANY,
Debtor,

BLUE DIAMOND COAL COMPANY

v.

DONNA E. SHALALA, Secretary of Health and Human Services, and ...

TRUSTEES OF THE UNITED MINE WORKERS' OF AMERICA COMBINED BENEFIT FUND

OPINION

This is an adversary proceeding in which Blue Diamond Coal Company, a reorganized Chapter 11 Debtor, challenges the constitutionality of the "super-reachback" provision of the Coal Industry Retiree Health Benefit Act of

1992 (the Coal Act), 26 U.S.C. § § 9704(a)(3). All parties have moved for summary judgment; the issues have been fully briefed; and the case was heard on oral argument on Monday November 7, 1994. The Court makes the findings of fact and conclusions of law which follow.

I. BACKGROUND

Blue Diamond runs bituminous coal mining and mining-related operations in Kentucky and Tennessee through several wholly-owned subsidiary companies. Between 1947 and 1964, Blue Diamond employed members of the United Mine Workers of America (UMWA) [1] and, pursuant to various National Bituminous Coal Wage Agreements (NBCWAs), made contractually defined royalty payments to a multiemployer welfare and retirement fund that operated on a pay-as-you-go basis. This fund promised its beneficiaries no permanent or perpetual benefits. In fact, beneficiaries of this plan were specifically told that benefits were revocable and not vested. The continuation of benefits at any future time was entirely contingent upon the receipt of sufficient tonnage royalty revenues from the participating operators. Blue Diamond's last UMWA contract expired in April of 1964.

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[1] The United Mine Workers of America is a labor organization representing coal industry mine workers throughout North America. For more than forty years, it has entered into a series of successive collective bargaining agreements known as National Bituminous Coal Wage Agreements with the Bituminous Coal Operators' Association, Inc., a multiemployer bargaining association established in 1951 that represents various large and small bituminous coal operators in collective bargaining with the UMWA.

Since that time, it has made no contributions to any UMWA benefit trust or done anything which would give any of its current or former employees a reasonable expectation of lifetime health benefits from any UMWA trust funds.

In response to the passage of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § § 1001-1381, mandating that pension funds be fully funded on an actuarial basis, the National Bituminous Coal Wage Agreement of 1974 restructured the existing UMWA benefit trust, dividing it into four separate trusts, only two of which are relevant to this lawsuit. One was the UMWA 1950 Benefit Plan and Trust which provided health benefits to miners who retired before January 1, 1976, and their dependents, including retirees from Blue Diamond. The other was the UMWA 1974 Benefit Plan and Trust which provided health benefits to both active miners and miners who retired after January 1, 1976, and their dependents.

By the late 1970s, a combination of demographic and economic factors began to adversely impact the financial stability of these UMWA benefit trusts. In the 1980s, many coal companies went out of business or otherwise ceased contributing to the funds, effectively dumping their retirees into the beneficiary population and forcing the remaining, participating employers to shoulder increasingly large contribution obligations to pay not only for their own retirees but also for these newly "orphaned" retirees. The increasing financial instability of the trusts, coupled with the economic disruption heralded by the strike of the Pittson Coal Company, lead Congress to seek a legislative solution to the problem. In March of 1990, then-Secretary of Labor Elizabeth Dole established the bi-partisan Advisory

Commission on Mine Workers Retiree Health Benefits which eventually produced the Coal Commission Report. The Coal Commission found, among other things, that the retired miners were entitled to the health care benefits that had been promised to them and that such commitments must be honored. It recommended either an industry-wide funding plan broadly taxing all current coal operators, or a more limited arrangement funded by past and present NBCWA signatories only -- possibly reaching back to the "signatory class of 1978." The report did not suggest that pre-ERISA signatories of NBCWAs like Blue Diamond had ever promised lifetime health care benefits or that they should be included in the "reach back" provision.

The Coal Act, which eventually passed, is undeniably good legislation designed to ensure the continuation of health benefits for tens of thousands of retired coal miners and their dependents.[2] It seeks to rescue from insolvency the two UMWA Welfare Benefit Trust Funds which were established in 1974, after the passage of ERISA. It does so by combining the two funds into a newly created "Combined Fund" and requiring all past employer signatories to NBCWAs to finance the Combined Fund's benefits. In other words, the legislation goes beyond the reachback suggested by the Coal Commission, which would have involved only post-ERISA signatories of collective bargaining agreements, to encompass coal companies such as Blue Diamond that have not signed NBCWAs since well before ERISA required vested benefits.

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[2] The Coal Act does not provide health benefits to coal industry retirees who were never members of the United Mine Workers of America

The Coal Act requires the Secretary of Health and Human Services to identify retired coal mine employees and their dependents who were entitled to health care benefits under the 1950 UMWA Benefit Fund and the 1974 Benefit Fund and to assign those beneficiaries to coal operators, such as Blue Diamond, on the basis of the operators' former contractual obligations to the former welfare retirement funds. The Coal Act imposes its obligations in proportion to a signatory operator's past experience in the industry and, under its assignment hierarchy, implicitly recognizes that coal operators signing post-ERISA collective bargaining agreements should bear the responsibility, in the first instance, for UMWA retiree health benefits. Only when the Secretary cannot assign a beneficiary to a more recent signatory does the Act look to pre-ERISA coal operators, such as Blue Diamond, to make beneficiary assignments. In addition, under the Coal Act, the Secretary may also assess Blue Diamond, and other operators, additional premiums, over and above the premiums assessed for beneficiaries specifically assigned to them, for their proportional share of "orphans," a class of beneficiaries with respect to whom the Secretary is unable to make assignments to specific coal operators. Of the 1,133 miners currently assigned to Blue Diamond by the Secretary, only 74 had actually retired from Blue Diamond when its last UMWA contract expired in 1964. (These retirees have been receiving health benefits from the UMWA 1950 Benefit Fund for the last twenty-eight years). The bulk of the retirees currently assigned to Blue Diamond worked for it at some point in their careers but actually retired from other employers.

II. THIS CASE

In this lawsuit, Blue Diamond alleges that the Secretary's imposition of assessments will cost it $ 4.9 Million Dollars in its first year alone; that its potential liability is approximately $ 25 Million Dollars; and that the Act deprives it of property without due process of law, and without just compensation, in violation of the Due Process and "Takings" clauses of the Fifth Amendment to the United States Constitution. It also charges that the Coal Act retroactively deprives it of legitimate contractual expectations, effectively rewriting long-expired UMWA wage agreements and requiring it to pay more compensation to its former employees than originally bargained for. It likens the Coal Act, as applied, to a retroactive minimum wage law that would require employers to give former employees a raise.

The Coal Act is predicated on a congressional finding that,

> in order to secure the stability of interstate commerce, it is necessary to modify the current private health care benefit plan structure for retirees in the coal industry to identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees. Pub. L. 102-486, Section 19142. (emphasis added)

Blue Diamond's entire argument is that, if a coal operator never signed an NBCWA after 1974, it cannot possibly be one of the "persons most responsible" for the liabilities of the

two post-ERISA trust funds the plan seeks to salvage. It points out that the Coal Commission recommended the legislation because it found that the miners had been promised lifetime benefits and that this commitment should be honored. Only those employer signatories to post-ERISA NBCWAs can be said to have ever actually promised lifetime health benefits to their retirees and their dependents. Blue Diamond contends that, unless it can be shown to have caused the liability of the UMWA health care programs by contractually promising retirement health care benefits, the Constitution prohibits Congress from retroactively holding it responsible for funding those benefits now in any manner other than a general tax upon society as a whole. In other words, it would have this Court find that it is unconstitutional to assign beneficiaries and assessments of premium liabilities to pre-ERISA signatories of contracts with the UMWA who never promised lifetime health benefits to their UMWA retirees.

A. The Due Process Challenge

The Due Process Clause of the United States Constitution provides that "no person shall ... be deprived of life, liberty, or property, without due process of law." In considering Due Process challenges to economic legislation, the Supreme Court has held repeatedly that such legislation must be sustained unless Congress has acted arbitrarily or irrationally. "Legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 15, 49 L. Ed. 2d 752, 96 S. Ct. 2882 (1976). This deferential standard

applies even if the legislation readjusting benefits and burdens upsets otherwise settled expectations or imposes a new duty or liability based on past acts. *See: Turner Elkhorn,* 428 U.S. at 16. As long as "a statute is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches." *Pension Benefits Guar. Corp. v. R. A. Gray & Co.,* 467 U.S. 717, 729, 81 L. Ed. 2d 601, 104 S. Ct. 2709 (1984).

What these cases tell us is that, in order to mount a successful Due Process challenge to the Coal Act's super-reachback provision, Blue Diamond must show that there is no rational relationship between that part of the legislation and an appropriate government goal. In other words, it must show that there is nothing in its past conduct that would make it rational to consider it "responsible" for the "plan liabilities." This it cannot do. The best Blue Diamond can do is show that, in extending the reachback provision beyond that recommended by the Coal Commission, Congress apparently erroneously believed that Blue Diamond and other contributors to pre-ERISA welfare and retirement funds had actually or effectively promised lifetime benefits to retirees and their beneficiaries. However, the actual Congressional finding which is mentioned in the legislation is not that Blue Diamond and others like it had actually promised benefits but that they bore "responsibility" for the "plan liabilities." There is no doubt that, to some extent, they did. By ceasing to contribute to the UMWA trust fund after its contractual requirement to do so had expired, Blue Diamond created some of the "orphans" who became the responsibility of the remaining contributing operators. These orphaned miners

continued to draw upon the funds and contributed to their financial instability.

The *Turner Elkhorn* case is highly instructive here. That case involved a Due Process challenge to the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972. In that legislation, Congress required coal operators to pay the medical costs of their former employees who were suffering from black lung disease, even though these employees had terminated their work in the industry before the Act was passed and even though the operators had never contracted to pay such compensation. The Supreme Court found that the Black Lung Benefits Act rationally spread the costs of the employees' disabilities to those who had profited from their labor. The same reasoning can be applied to the facts of this case. Congress has chosen to spread the costs of the Combined Fund's benefits to those employers who had profited from the labor of UMWA miners and who, at some time in their histories, had contributed to multiemployer welfare benefit funds.

B. The Takings Clause Challenge

The Takings Clause of the Fifth Amendment prohibits the government from taking property for public use without paying the former owner just compensation. It is "designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Penn Central Transp. Co. v. New York City,* 438 U.S. 104, 123, 57 L. Ed. 2d 631, 98 S. Ct. 2646 (1978). However, there are "a wide variety of contexts ... [in which] government may execute laws or

programs that adversely affect recognized economic values." *Id.* at 124. "Vested economic rights are held subject to the Government's substantial power to regulate for the public good the conditions under which business is carried out and to redistribute the benefits and burdens of economic life." *United States v. Locke,* 471 U.S. 84, 105, 85 L. Ed. 2d 64, 105 S. Ct. 1785 (1985). There is no set formula for determining whether economic legislation violates the Takings Clause. Courts normally consider the economic impact of the regulation on the challenging party; the extent to which the regulation has interfered with its distinct investment-backed expectations; and the character of the governmental action. See *Connolly v. Pension Ben. Guaranty Corp.,* 475 U.S. 211, 225, 89 L. Ed. 2d 166, 106 S. Ct. 1018 (1986).

The *Connolly* case involved an unsuccessful Takings Clause challenge to the "withdrawal liability" amendments to ERISA in the Multiemployer Pension Plan Amendments Act of 1980 (MMPAA). After carefully considering the regulatory takings factors, the Supreme Court found that the MMPAA did not constitute a taking, even though the employees who benefited from the Act's requirements might have had no employment relationship whatsoever with the employer affected by the law. The Court found that, the MMPAA's "interference with the property rights of an employer arises from a public program that adjusts the benefits and burdens of economic life to promote the common good and ... does not constitute a taking requiring Government compensation." 475 U.S. at 225. The Court made similar findings in another Takings Clause challenge, *Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust, __ U.S.____,* 124 L. Ed. 2d 539, 113 S. Ct. 2264 (1993). The reasoning in the *Connolly* and *Concrete Pipe* cases can of

course, be applied to the facts of the instant case. However, it is important to note that in both *Connolly* and *Concrete Pipe*, the plaintiffs had voluntarily participated in ERISA-regulated, "defined benefit" pension plans at a time when contingent employer withdrawal liability for unfunded vested benefits was already imposed by the ERISA law as it existed when the plaintiffs signed up. The challenged amendments in the MMPAA simply made employer withdrawal liability automatic and unlimited, immediately upon an employer's withdrawal from a multi-employer defined benefit plan. The "taking" in those cases was upheld because of the employers' previous association with their ERISA plans.

In order to survive a Takings Clause challenge under the terms of both *Connolly* and *Concrete Pipe*, the Coal Act must rest on some conduct on Blue Diamond's part that would make it rational to hold it responsible for the health benefits to be covered by the Combined Fund. Blue Diamond's conduct, that subjects it to liability under the Coal Act, consisted of employing UMWA members between 1947 and 1964, and making contractually defined and limited royalty contributions to a multiemployer welfare and retirement fund that operated on a pay-as-you-go basis. It is not at all clear that this is a constitutionally sufficient basis for liability. In the Court's opinion, Blue Diamond's Takings Clause challenge has considerable appeal.

Of the three factors found by the *Connolly* court to be of particular significance to a Takings Clause challenge, the first is, of course, the economic impact of the regulation upon the claimant. It is undisputed that the Coal Act "takes" $ 4.9 Million Dollars of Blue Diamond's money in the first year alone and it may end up taking as much as $ 25 Million

before Blue Diamond's assigned beneficiaries expire. This is a gross, uncompensated taking whose severe economic impact must be recognized. Any analysis of the first factor must strongly support Blue Diamond's position.

The second *Connolly* factor is the extent to which the regulation has interfered with distinct investment-backed expectations. The Secretary suggests that it was unreasonable for Blue Diamond to believe that its 1964 National Bituminous Coal Wage Agreement would forever limit its responsibility to the UMWA benefit trusts. Maintaining economic stability in the coal industry has long been a matter of federal concern. Blue Diamond should not be surprised that Congress acted in 1992 to avert the crisis in the 1950 and 1974 Benefit Trusts which threatened to disrupt coal production and deprive UMWA retired miners of their long-expected lifetime health benefits. The Court agrees that it was reasonably foreseeable that Congress would take action to ensure that the UMWA benefit trust would remain solvent and capable of meeting its obligations. But it was a good deal less foreseeable that the legislation chosen to solve the problem would reach back to conduct which occurred almost 30 ago in order to enforce a "promise" Blue Diamond never actually made. The best that can be said for the Secretary's argument is that Blue Diamond had to have known that its own retirees were among the many "orphans" drawing benefits from the UMWA trusts and contributing to their financial instability. The second factor also favors Blue Diamond, but less emphatically.

The third factor to be considered is the "character" of the Coal Act. The Secretary suggests that the nature of the governmental action in the Coal Act is indistinguishable from

the MPPAA withdrawal liability provisions which the Supreme Court found not to constitute a taking in *Connolly*. She points out that neither MPPAA nor the Coal Act permits the government to physically invade or permanently appropriate any of the employer's assets for its own use. Rather, both statutes implement a "public program that adjusts the benefits and burdens of economic life to promote the common good" and therefore do not constitute a taking requiring government compensation. The defendant Trustees, in their brief, also point out that, to the maximum extent possible, the Coal Act imposes liability that is directly related to the employment relationship between each assigned operator and the Combined Fund's beneficiaries. With regard to the assignment of "orphans," they suggest that Congress carefully weighed the alternatives and expressly determined that the costs of providing health care for orphan retirees would be most fairly borne by those NBCWA coal operators who voluntarily chose to participate in a multiemployer health care system and presumptively derived a quid pro quo in collective bargaining from their agreement to do so.

With regard to the Secretary's assignment of retirees who actually worked for it in the past, Blue Diamond concedes that it has received the "fruits of their labor" (echoing the legal basis upon which a Takings Clause challenge failed in the Turner Elkorn case). However, it points out that the Combined Fund created by the Coal Act also provides benefits to wives, widows and dependents of miners who never worked in the coal mines. It has not enjoyed the fruits of their labor. Blue Diamond contends, generally, that the true "character" of the Coal Act, as applied to it, is that of a statute justifying a gross property deprivation solely by means of a fiction -- a presumed

promise of benefits which was never actually made.

The Court fully understands Blue Diamond's argument that it made no promise of lifetime benefits and, therefore, did not contribute to the UMWA benefit funds' legal liability. But it did contribute to the problem which the Coal Act attempts to solve because its own retirees are beneficiaries of the Combined Fund. The Court is mindful that the Takings Clause is designed to bar the government from forcing some people to bear public burdens which, in all fairness and justice, should be borne by the public as a whole. And it is by no means clear that, in all fairness and justice, the public rather than past and present NBCWA signatories, should shoulder the responsibility for rescuing the 1950 and 1974 UMWA Benefit Trusts and for ensuring that retired UMWA miners receive the lifetime health benefits promised to them by later NBCWA signatories. It is a coal industry problem which should be solved by the coal industry. Coal operators like Blue Diamond contributed to the problem and should be part of the solution. In other words, an analysis of the third *Connolly* factor favors upholding the constitutionality of the challenged legislation.

The Court notes that the constitutionality of the Coal Act has already been subjected to Due Process and Takings Clause challenges in *LTV Steel Co., Inc. v. Shalala* (*In re Chateaugay,* 163 Bankr. 955 (S.D.N.Y. 1993); *Templeton Coal Co. v. Shalala,* 855 F. Supp. 990 (S.D. Ind. 1993); and *Barrick Gold Exploration, Inc. v. Hudson,* 823 F. Supp. 1395 (S.D. Ohio, 1993). All three district courts upheld the constitutionality of the Coal Act. The *LTV Steel* and *Barrick* cases were not brought by operators who, like Blue Diamond, have been nonunion since before 1974. However, the

Templeton case, like the one before this Court, was brought by operators who last signed NBCWAs in the 1950s and early 1960s.

The *Templeton* court applied the three *Connolly* factors and felt that the plaintiffs' showing under their Takings Clause challenge was insufficient to justify issuing a preliminary injunction. But it pointed out that it was making its ruling in the "exaggeratedly rapid atmosphere of a preliminary injunction proceeding." 855 F. Supp. at 1004. It suggested that the super-reachback provisions of the Coal Act must be "at the very edge of the broad range of permissible legislative allocation of specific economic burdens ... perhaps ... over the edge." *Id.* The *Templeton* court continued,

> The imposition of retiree health care costs on the Plaintiffs now, thirty or forty years after their exit from the industry, certainly has a draconian air about it. By no means does the court view the Plaintiffs' challenge to the Coal Act as a frivolous attack. However, the character of the decision to allocate responsibility for this economic burden to former participants in the industry does not seem to be different in character from the liability constitutionally imposed for Black Lung disease benefits, pension funding, and environmental contamination as discussed in the cases cited above. *Id.*

This Court has no more idea than the *Templeton* court where the line should be drawn in constitutional challenges to

economic legislation. If the super-reachback provision of the Coal Act does not cross the line, it must step right up to it. Nevertheless, the Coal Act must be viewed as a rational legislative response to a crisis in coal retiree health benefits. It is the product of legislative thought, analysis and compromise and there is no evidence that Congress acted arbitrarily or without prior substantive investigation and debate. The fact that Blue Diamond ceased contributing to UMWA benefit trusts in 1964, should not relieve it of responsibility in this instance. It would be unfair if the lifetime health care costs of Blue Diamond's own retirees were to be born by its competitors in the coal industry. And, although the Coal Act also requires Blue Diamond to pay a proportionate share of financing the health care benefits of orphan retirees, who never were its employees, this aspect of the statute is, in fact, very similar to provisions already found constitutional in the MMPAA. Congress has weighed the alternatives and rationally determined that the costs of providing such benefits for orphan retirees should be borne by NBCWA coal operators who, at least at one time, voluntarily chose to participate in a multiemployer health care system.

III. CONCLUSION

In conclusion, the Court FINDS that the super-reachback provision of the Coal Act violates neither the Due Process nor the Takings Clause of the Fifth Amendment to the United States Constitution. Blue Diamond's motion for summary judgment will be denied and the motions filed by the Secretary of Health and Human Services and by the Trustees of the Combined Fund will be granted.

ENTER:

/s/_____
THOMAS G. HULL
UNITED STATES DISTRICT JUDGE